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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,218	09/28/2001	John David Tucker	KCC-15,529	7138

35844 7590 10/18/2006

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EXAMINER

TRAN, THAO T

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/967,218

Applicant(s)

TUCKER ET AL.

Examiner

Thao T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,7-11 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,7-11 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/31/2006 has been entered.
2. Claims 1, 5-11, 20-23 are currently pending in this application. Claims 1 and 20 have been amended. Claims 4 and 12-19 have been canceled. Claims 2-3 have been previously canceled.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 5-11, 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 20 are indefinite due to the use of “polypropylene alpha-olefin comonomers”. It is unclear to the examiner if the copolymers contain all propylene, ethylene, and alpha-olefin comonomers; or that there are copolymers contain propylene and ethylene, and there are copolymers containing propylene and alpha-olefin comonomers.

Clarification of the copolymers is required.

Claim Rejections - 35 USC § 103

5. The examiner is interpreting that the polypropylene in the claims can be a homopolymer or a copolymer. The examiner is further interpreting the word “wherein” in the claims as comprising.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 5-11, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutweiler et al. (US Pat. 5,514,752).

Gutweiler teaches a high impact polypropylene molding composition, comprising a mixture of 1-99% by weight of propylene homopolymer or copolymer and 0-60% by weight of a rubber, such as ethylene propylene diene (see abstract; col. 1, ln. 12-16, 55-59), overlapping the instantly claimed ranges. Gutweiler further discloses the use of 90% by weight of polypropylene and 5.96% of EPM (see Examples 7-9), which reads on the instantly claimed range in claim 20 and approximates the claimed range in claim 1.

Gutweiler further teaches the molding can be used for the production of fibers that can be written or printed on (see col. 1, ln. 38; col. 3, ln. 60-63). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that Gutweiler’s invention would be used in making textile fibers and other articles made therefrom. This is because fibers have been commonly made into textile, and by teaching the production of fibers, Gutweiler’s invention would be inclusive of textile fibers or the like.

Note that since the high impact polypropylene compositions are prepared by mixing polypropylene and a rubber, the rubber component serves to strengthen the compositions. Thus the rubber reads on the presently claimed impact modifier and the high impact propylene reads on the presently claimed strengthened polypropylene.

Since the reference teaches the fibers having the same polypropylene composition, the fibers of the Gutweiler would inherently have the same elastomeric properties and softness.

With respect to the textile fiber being spunbond, it has been within the skill in the art that how the fiber is made would have no significant patentable weight when the fiber is being considered. Applicants are reminded that in an article claim, patentability would be imparted by structural elements, and not how the article is made. See MPEP 2113.

Response to Arguments

8. Applicant's arguments filed on 7/31//2006 have been fully considered but they are not persuasive.

In response to Applicants' argument that the inclusion of polyvinyl butyral in Gutweiler would not provide the same softness as presently claimed, it is first noted that the claim language does not exclude other chemical components in the polypropylene composition. Secondly, as pointed out in the prior Office action, Applicants have not provide adequate support to illustrates the effects an additive would have on the properties of the blend of PP and EPDM. In addition, while Gutweiler does teach a polypropylene blend including polyvinyl butyral, the reference also discloses, in the prior art section, a polypropylene blend of polypropylene and EPM or EPDM,

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without the inclusion of polyvinyl butyral. Thus, a blend of polypropylene and EPM or EPDM has been taught in the prior art.

In summary, Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Applicants are reminded that in an article claim, it is the structural or chemical elements, and not properties, that impart patentability. To patentably distinguish the presently claimed invention from the prior art, Applicants should provide structural or chemical components that give the article its properties different from the prior art.

Contact Information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 9:00 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thao T. Tran
Primary Examiner
Art Unit 1711

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October 13, 2006